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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

At Richmond, DECEMBER 19, 2000

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUE980628

v.

AUBON WATER COMPANY

**ORDER ON SECOND SETTLEMENT PROGRESS REPORT**

On December 8, 2000, Hearing Examiner Michael D. Thomas issued a Second Settlement Progress Report relating to the Examiner's monitoring of the Aubon Water Company's ("Aubon" or the "Company") progress in complying with the directives of the Commission's Order of Settlement issued on December 16, 1998 ("Order of Settlement"). In that order, the Commission directed Aubon to construct a water treatment facility to serve the Long Island Estates subdivision, near Smith Mountain Lake in Franklin County, Virginia, and established certain deadlines by which the Company was to design and construct the facility. In a companion case in Docket No. PUE990002, the Commission approved a rate increase that included revenues calculated to recover the cost of installing the water treatment facility, and directed Aubon to establish an escrow account for the sole purpose of paying expenses associated with the construction, operation, and maintenance of such facility. By Order dated February 17, 2000, the Commission assigned the Hearing Examiner to monitor the Company's efforts to comply with the Order of Settlement.

The Hearing Examiner issued his first progress report on May 1, 2000 ("May 1 Report"). In the May 1 Report, the Hearing Examiner recommended that the Commission extend the date by which Aubon must secure financing for construction of the water treatment facility from August 17, 2000, to December 31, 2000. By Order dated May 26, 2000, the Commission adopted the Hearing Examiner's recommendations.

On September 18, 2000, the Hearing Examiner scheduled a hearing for November 6, 2000, for the purpose of receiving evidence on the issue of whether there is any possibility that the facility can be constructed; if not, whether Aubon should be released from the requirements of the Order of Settlement, and be directed to decrease its rates to the level approved in its last rate case, pay remaining bills associated with the facility, and refund any amounts remaining in the escrow account to its customers.

On November 6, 2000, the hearing was convened as scheduled. The president of Aubon, G. Ray Boone, appeared on behalf of the Company. Staff was represented by its counsel Don R. Mueller, Esquire. A company that has expressed interest in purchasing Aubon, Petrus Environmental Services, Inc. ("Petrus"), was represented by its counsel Michael S. Ferguson, Esquire. Two public witnesses appeared.

On December 8, 2000, the Hearing Examiner issued his report ("December 8 Report"). In his report, the Hearing Examiner stated that two key issues were addressed at the hearing. The first issue concerned the approval of the final plans and specifications for the water treatment facility. The Hearing Examiner stated that a representative of the Department of Health, Office of Water Programs ("VDH-OWP") appeared, and testified that his office had received everything it needed from the Company to consider approval of the final plans and specifications.

The second issue concerned the possible purchase of Aubon by Petrus. The Hearing Examiner explained that Aubon had thus far been unable to obtain construction financing needed to build the water treatment facility, due in large part to annexation by the Town of Rocky Mount

of a portion of Franklin County that included Aubon's Franklin Heights water system.<sup>1</sup> The Hearing Examiner found that Aubon is financially incapable of completing the construction of the facility or complying with the Order of Settlement. He added that Aubon does not have the financial means to defend its Certificate of Public Convenience and Necessity from impairment by the Town or to defend its property right from an unconstitutional taking by the Town.<sup>2</sup> The Hearing Examiner opined that the purchase of the Company by Petrus probably represents the last chance for homeowners in the Long Island Estates to have a water treatment facility built to serve their subdivision; however, subsequent negotiations by Petrus have offered little optimism for that scenario. More specifically, the Hearing Examiner stated that Mr. David Petrus testified that his company had entered into an Intent Agreement with Aubon for the purchase of the Company, but that such purchase was conditioned on reaching favorable terms with the Town regarding the Franklin Heights water system. The Hearing Examiner further stated that, since the hearing was held, Petrus has informed Staff that the Town made an offer of \$25,000 for the Franklin Heights water system, and Petrus is unwilling to pursue the purchase unless the Town offers at least \$100,000.

The Hearing Examiner concluded that although the prospects that the water treatment will be built are slim, he believes it is incumbent upon the Commission to provide the parties every opportunity to reach an agreement. The Hearing Examiner recommended that, in view of the ongoing negotiations between Petrus and the Town, the Commission extend its deadline for Aubon to obtain financing for the water treatment facility to March 1, 2001. He also recommended that the Commission authorize Aubon to disburse funds from its escrow account

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<sup>1</sup> Aubon's bank refused to lend the Company money for the water treatment facility until the Town either agreed to pay Aubon an amount equal to the amount of the loan for the Company's Franklin Heights water system, or the Town agreed that the Company could continue to operate its Franklin Heights water system for the life of the loan. The background of this case is explained in greater detail in the Hearing Examiner's first Settlement Progress Report filed on May 1, 2000.

<sup>2</sup> In his May 1 Report, at page 13, the Hearing Examiner opined that the Town's attempt to install a parallel water system in Franklin Heights may constitute a "taking" of Aubon's property right. The Hearing Examiner added that the Company's Certificate of Public Convenience and Necessity is a property right, citing *Town of Culpepper v. VEPCO*, 215 Va. 189, 194, 207 S.E.2<sup>nd</sup> 864, 868 (1974).

to pay its consulting engineers, who have provided services to the Company since February 2000, without being paid.<sup>3</sup>

The Hearing Examiner provided an opportunity for the parties to file comments on his progress report. None was filed.

NOW UPON CONSIDERATION of the Hearing Examiner's December 8 Report and the record developed herein, the Commission is of the opinion and finds that the Hearing Examiner's findings and recommendations in the December 8 Report are reasonable and should be adopted. The date by which Aubon may secure financing for the water treatment facility is hereby extended to March 1, 2001. Further, we hereby authorize Aubon to disburse funds out of Aubon's escrow account in the amount of \$6909.12 to Spectrum Design. The Hearing Examiner is directed to continue monitoring the Company's activities with respect to the Order of Settlement. Accordingly,

IT IS ORDERED THAT:

- (1) Aubon is hereby granted an extension of time, through and including March 1, 2001, to secure financing for the construction of the water treatment facility.
- (2) Aubon may disburse monies from its escrow account in the amount of \$6909.12 to pay its engineers, Spectrum Design.
- (3) The Hearing Examiner shall continue to monitor Aubon's compliance with the Order of Settlement in Case. No. PUE980628.

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<sup>3</sup> Aubon's engineers, "Spectrum Design," were formerly known Spectrum Engineers, P.C. Garvis M. Reynolds, principal engineer, sent a letter, dated September 18, 2000, to the Hearing Examiner stating that the company's name had been changed to "Spectrum Designs." Mr. Reynolds stated that Aubon's total bill to date was \$6909.12. The September 18 letter was filed with the Clerk of the Commission, *see* Document Control No. 000920118, and is the most recent statement of record of Spectrum Design's charges.